
MONTANA REAL ESTATE

Volume 7, Issue 3

July 2002

HILGENDORF REAPPOINTED

Governor Judy Martz announced the reappointment of Terry Hilgendorf of Great Falls to the Board of Realty Regulation as one of the two public members. Mr. Hilgendorf is the Manager of First American Title in Great Falls

Terry was originally appointed to the Board May 9, 1998 and is serving his second 4-year term as a public member. His current term expires May of 2006. Terry currently serves on the Complaint Screening Committee.

As a public member Terry brings a unique perspective to the Board. Being the manager of a title company, he is knowledgeable about the real estate industry, but from a different perspective. Terry is enthusiastic about the role he plays on the Board and carries out his responsibilities with care and concern.

We congratulate Terry on his reappointment to the Board and look forward to working with him in the future.

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From The Chair

By John Beagle

BROKER SUPERVISION - ARE YOU DOING IT RIGHT?

I can't believe that summer is drawing to a close (it actually isn't for me right now as I am writing this in mid-June.) In any event, I hope everyone enjoyed their time this summer and I hope that most of you had an opportunity to get away from the hustle and bustle of real estate activities and spend some quality time with your families.

This article is directed, primarily, to real estate brokers and will discuss the sometimes confusing area of broker supervision. For a lot of you, broker supervision is not an issue as you have no sales agents under your broker license. For others, however, broker supervision is an everyday issue and you may be responsible for the supervision of from one to fifty sales agents.

The requirements of broker supervision are found in the Administrative Rules Section 8.58.423 and more specifically under this section in subsections 6 through 10. If you have time (and I do) I would like to go over each of these subsections individually:

Subsection 8.58.423(6) says that the supervising broker has the ultimate responsibility for the actions of the licensed salesperson under their supervision and that if that salesperson gets a complaint filed against them with BRR that the supervising broker will be provided a copy of that complaint. What it doesn't say, but what actually happens, is that when a complaint is filed against a salesperson, the supervising broker is drawn into the complaint and has to physically prepare a written narrative stating their version of the alleged transaction and how they were involved as the supervising broker.

Quite often, the screening panel, upon reading the complaint responses from both the salesperson and the supervising broker, feel that the supervising broker had done an inadequate job of supervising that

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THE HONORABLE JUDY MARTZ
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The views expressed in the reprinted articles are those of the author and not necessarily those of the Board and are intended as informational only.

ATTENTION ALL PROPERTY MANAGERS

Attention all licensed Property Managers. This is a reminder that your continuing education requirements have changed. Effective January 1, 2002, you are now required to complete 12 hours of Board approved continuing education every year.

You can find course information on our continuing education calendar on-line. To find the calendar go to:

discoveringmontana.com/dli/rre

and clicking on the Continuing Education Calendar bar. That is your link to the currently updated education information.

Additionally, you will be completing an education reporting form along with your renewal. You will no longer send in your continuing education completion certificates at renewal time. You may be asked to provide those during our random education audit in March so keep track of your certificates!

U.S. Supreme Court to hear case

IS COMPANY OWNER PERSONALLY LIABLE FOR ACT OF AGENT?

The U.S. Supreme Court has agreed to hear arguments in a critical fair housing case coming out of California in which the trial court pierced the corporate veil of a real estate company to hold the owner personally liable for the actions of the agent.

The case is Holley vs. Crank, 258.F.3d 1127; 2001, 9th U.S. Appl, and how the high court decides the case could set the tone of fair housing litigation for years to come.

What makes the case critical is not whether the real estate agent violated the law – Grove Crank's reference to the home buying Holleys as "niggers" and "a salt and pepper team" have made that a foregone conclusion. Nor is it questioned that Crank's employer, Triad Realty, is on the hook for Crank's behavior – that also is a foregone conclusion.

At issue is whether Crank's behavior was so outrageous, and whether Triad owner David Meyer was so negligent in his failure to train Crank, that the Holleys are justified in going after Meyer's personal holdings as a measure of retribution.

Typically in corporate law, the answer is no. A harmed individual may sue an employee, a boss and the corporation, but normally liability stops there. When Congress passed the Fair Housing Act, however, it deemed fair housing to be so important to American citizens that it opened up, under very limited circumstances, the possibility of penetrating the "corporate veil" to attack the personal assets of individual corporate officers.

Attorneys for the Holleys say theirs is a kind of case that window was created for. Meyer, however, and the National Association of Realtors as well, maintain that window to personal liability does not apply in this case.

History

The basic background is pretty straightforward.

David Holley is white and his wife, Emma, is an African American. In 1996, the Holleys began working

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salesperson. There have been complaints that have been dismissed against the salesperson but the screening panel has initiated a new complaint against the supervising broker for improper supervision of a salesperson. Remember that if you are a supervising broker and a complaint is filed with BRR against one of your salespeople you will be involved in that complaint and you will be required to substantiate your level of supervision.

Subsection 8.58.423(7) requires brokers to provide on-going training to their sales staff. Are you doing this? This rule says that if you are a supervising broker you **MUST** provide on-going training to the sales agents under your supervision. It doesn't say you "may" provide. It doesn't say you "can" provide. It says you "must" provide on-going training. Are you doing this? If you aren't and a complaint is received by BRR against one of your sales agents and your response shows that you are not providing "on-going training" then BRR will initiate a complaint against you for failure to provide adequate supervision.

Subsection 8.58.423(8) is a simple enough sentence. A salesperson's listing is not a listing until it is read, approved AND SIGNED by the supervising broker. This is the law. Be sure that your salespeople know that you, the supervising broker, need to approve and sign every new listing that they bring to the office.

Subsection 8.58.423(9) requires the supervising broker or managing broker to exercise adequate supervision to assure that all documents for a real estate transaction prepared by a salesperson under his/her supervision are appropriately prepared and executed.

Hey, no one knows more than me how many different forms we, as licensees, have to deal with on a daily basis. When I started in real estate (a few years ago) there was a one-page listing agreement and a one-page buy-sell agreement. Period. Today we have more forms than we have clients and they all have to be properly filled out and signed and dated. It is the supervising brokers responsibility to see that that salesperson is correctly completing all of the required forms and that they are all signed and dated by the seller's and buyer's. Huge problems can arise if forms are not correctly completed. Make sure that the files of your agents whom you supervise have all of the required paperwork for a transaction and everything is signed and dated properly.

Subsection 8.58.423(10) says a broker shall not sign

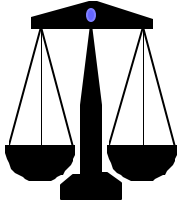
the application of a salesperson unless the broker and salesperson will be in lawful association, through employment contract or otherwise.

If you, as a supervising broker, are going to have licensed sales agents under your supervision, then be sure that you have all of your "i's" dotted and your "t's" crossed. Do you have an employment contract with those agents? Do you know who the listings belong to if they were to leave you and join a competitor? Are your agents employed by your company or are they independent agents? How are your commissions to be split? Every supervising broker should have a signed employment contract with their sales agents. Every office should have a Policies and Procedures Manual. Things can happen - be prepared.

Well, that's about all I have time for today. However, as you can see, the subject of agent supervision should not be taken lightly. I can tell you for a fact, BRR (and especially the screening panel) sees many, many problems in the area of broker supervision. In Montana there are some sales agents running around out there with NO idea how to conduct real estate business and they are getting themselves, and their so-called supervising broker into big trouble. Don't let this happen to YOU.

As an after thought I would like to mention the big problem that the BRR office is having in the area of required paperwork. I'm talking about license renewals, education affidavits, etc. BRR sends this required documentation to all licensees on a regular basis. They get a lot of it returned because the supervising broker doesn't know where the sales agent is. That agent is no longer around and the broker doesn't know where they are. Is that good supervision? How about when a piece of mail from BRR arrives for a sales agent and lays in that agent's in-box for 4 months. Not good supervision. How about when an agent goes South for the winter and the broker doesn't forward the license renewal application? Not good supervision. The BRR office gets a LOT of mail returned because the sales agent is "who-knows-where" and the broker doesn't care. NOT GOOD SUPERVISION.

I'm not pointing fingers at anyone - I am just reminding you that if you supervise salespeople you have some responsibilities. If you don't want these added responsibilities then either don't take them on in the first place or request that your sales agent(s) work under the supervision of a different broker.



COMPLAINT SCREENING COMMITTEE

By Laura Odegaard

The Board of Realty Regulation Screening Panel has met several times since the last newsletter was published, and the most often visited subject was regarding education requirements. It is surprising to me that some licensees are not aware of the current Rules and have not read the yearly Affidavit when submitting it to the BRR with the total number of education credit they have fulfilled. The misconception indicates that some folks are not aware that ALL licensees are required to meet the minimum of 12 hours of education each year, regardless of “active” or “inactive” status. It is now half way through the year, and perhaps a good time to review your education credits.

We have had several Complaints pertaining to property management, one being a licensee on “inactive” status who advertised properties over the internet, and the other being a licensee practicing property management without broker supervision.

The continued source of confusion remains with agency laws. It is very important that you know what your office policy is before you establish agency relationship with a customer. Is your office practicing “Dual-agency” or is your office practicing “In-house designation?” I recommend that you bring this topic to discussion in an office meeting if you do not know your office policy regarding this matter. It would be a good idea to have a form that explains your office policy that you could give to your customer when you meet with them for the first time. It is at that meeting that you will want to explain agency law and determine your role with them. If you have not attended a class on “Agency”, I highly recommend you do so. Not all states practice agency in the same form, so make sure you attend a class that is explaining “agency” according to Montana law.

Find us on-line at :
discoveringmontana.com/dli/rre

To find the latest CE calendar, forms, exam information, meeting dates, the latest statutes and rules, and much more!

GIFT FUNDS ‘MEET CRITICAL NEED’

Residential down payment gifts do not increase the rate of mortgage loan delinquencies, according to a recent study commissioned by one of the largest and most active down payment gift programs, The AmeriDream Charity Inc.

National credit-reporting company Experian Inc. performed the study, which reported the overall delinquencies with AmeriDream’s portfolio for the second quarter 2001 were 5.48 percent compared with 10.4 percent for the total FHA loan portfolio. Following Sept. 11, fourth quarter 2001 delinquencies for AmeriDream were 8.81 percent, while FHA’s were 12.1 percent.

“With this study, we now have concrete statistical data to refute critics who charge that gift funds lead to higher rates of mortgage default,” said Christopher Russell, CEO of AmeriDream. “The reality is that down payment gift programs, like AmeriDream, meet a critical need among low- and moderate-income families, helping them overcome the single largest barrier to homeownership – the down payment. More importantly, programs like ours now prove to do this with no increased risk of mortgage default.”

The study charts the percentage of loans with past due payments for 30-, 60- and 90-day time frames. In all categories, the study reported that mortgage loans made in conjunction with down payment gift assistance from AmeriDream had lower delinquency rates than similar FHA loans.

AmeriDream said it’s currently the nation’s largest non-profit down payment gift provider and analysis of its portfolio serves as a model for the industry. The organization provides gift funds for down payments to an average of 4,000 families each month.

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**Do we have your current
address?**

**It is up to YOU to keep the board
office informed of any change of
address.**

with Crank, an agent for Triad, in an attempt to purchase a home.

The Holleys were pre-qualified to purchase a home in the \$150,000 range, but the Holleys maintain Crank only showed them properties that were too expensive.

Eventually, the Holleys went out on their own and found a house in a new development. By coincidence, the development was represented by another agent at Triad. In a conversation with builder Brooks Bauer, the Holleys indicated they would like to buy a home and offered \$145,000. Bauer suggested he would likely accept the offer, but said it had to come through Triad.

The Holleys talked with the development's representative, Triad agent Terry Stump, and told him they would like to make the offer and were willing to put down \$5,000 until the new home was ready – giving them time to sell their existing home. Stump indicated he felt the offer was fine.

A few days later, however, Stump called the Holleys back, advising them that a "more experienced agent," later identified as Crank, said \$5,000 was not enough to hold the property and the Holleys needed to come up with more money before he would submit the offer.

A few days after that, the builder called Triad to ask about the status of the Holley offer. He spoke with Crank, who told the builder he did not want to deal with "those niggers," and called them a "salt and pepper team."

Despite Bauer's protest, the deal never came through. The Holleys hired a builder to construct a home and Bauer ended up selling the property the Holleys had expressed interest in, but for \$20,000 less than what the Holleys said they would pay.

Shortly thereafter, both the Holleys and Bauer filed fair housing complaints against Crank, supervising broker Dave Meyer, the firm Triad Realtors, Inc., and against Dave Meyer personally as the owner of Triad.

Owner Liability

The initial question before the court, however, is how much liability Meyer, as the sole owner of the company, had regarding the conduct of employees of the Triad corporation.

Meyer maintains he was unaware of the Holley transaction and should not be held personally liable. His attorneys maintain Meyer was targeted primarily because of his personal wealth, making him a "deep pocket."

The Holleys' lawyer countered that Meyer was personally responsible because of his "utter failure to supervise, direct and control the activities of Triad's salespersons."

The trial court ruled in favor of Meyer, stating while the Holleys were entitled to sue Triad, the company's officers and shareholders were not liable for the actions of employees.

The 9th Circuit, however, reversed the lower court – stating that the Fair Housing Act contains specific provisions that require individuals to be responsible for their employees. That court held that Meyer could not delegate responsibility for Fair Housing Act training to the corporation or to the individual agents, but was considered personally responsible to make sure that training occurred.

The question of how much personal liability real estate company owners have over their employees is likely the reason the U.S. Supreme Court has agreed to hear the case.

NAR attorney Ralph Holman, who helped construct the brief that NAR submitted on behalf of Meyer, said he felt it was a "good sign" that the Supreme Court had accepted the case.

Said Holman, "The justices probably wouldn't have taken it if they didn't have a problem with the ruling. There is nothing in the Fair Housing Act that says corporate owners can be held personally responsible for the actions of their agents.

Meyer attorney Douglas Benedon, in asking the high court to review the decision, said allowing the 9th Circuit decision to stand would "open the floodgates of litigation" against broker-owners nationwide.

A spokesman for the Supreme Court said there was only a loose timetable for issuing a ruling. The next session of the Supreme Court opens on the first Monday in October (Oct. 7) and typically runs until the following June or July. Arguments could be set any time between those dates, and a decision could come at any point thereafter.

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Understanding The Required Agency Forms

By Vicky Hammond

Since Montana's Agency Law came into effect in 1995 many in the Real Estate community seem to operate in confusion with regards to "Agency" and the proper disclosures.

Granted, the initial law was rather cumbersome, with disclosures going back and forth to everyone involved in the transaction. In 1997 the law was simplified to disclose 'Agency Relationships' only to the party or parties with whom you were representing as an Agent.

Buyer's Agent will need the following documents completed.

- A Buyer Brokerage Agreement, either exclusive or non-exclusive. (This gives you permission to actually work as an Agent for the buyer)
- 'Relationship in Real Estate' form signed by you and the buyer. Check the box 'Buyers Agent.' Check the 'Dual Agent' box only if the buyer agrees you can act in a Dual Agent capacity.

The Real Estate Agent should have these forms signed by the buyers sometime prior to writing the purchase agreement and the buyers should receive copies of everything they have signed. It is not sufficient to just have the Relationship in Real Estate form completed and signed. You must have a written Buyer Brokerage Agreement.

Sellers Agent will need the following documents completed.

- The signed Listing Agreement. (This gives you permission to act as a seller's agent.)
- 'Relationship in Real Estate' form signed by you and the seller. Check the 'Sellers Agent' box. This is also a good time to determine if the seller will agree to allow you to act as a dual agent in selling their property. If they agree, check the 'Dual Agent' box also.

Your office policy will dictate whether you practice 'dual agency' or 'in-house designee' when selling in-house listings.

These disclosures are between you and your buyer or seller; they do not need to be given to anyone on the other side of the transaction.

What if you are representing only the seller or only the buyer and no one is representing the other party? What agency disclosures should be given to that unrepresented buyer or seller? Technically none are required; there is a reconfirmation of agency on the MAR buy sell, which discloses to all parties who the agent is representing. A good business practice, however, would be an additional disclosure under 'special provisions' spelling out who you are representing so there is no misunderstanding. If you do not use the Montana Association of Realtor® forms, this disclosure needs to be made somewhere in your purchase agreement or by a separate document attached to the buy-sell.

In addition to giving your buyers or sellers the 'Agency Disclosure' you are also under an obligation to perform your duties as a Real Estate licensee in accordance with the laws spelled out in these disclosures. Are you acting in the best interest of your client? Are you disclosing the proper information to all parties? Did your buyer or seller give you permission to disclose personal information to others? Do you know something about your buyers that would prevent them from closing the transaction and did you disclose that to the listing agent?

This is a good time to review the wording in these documents so you are representing your buyer or seller to the best of your abilities.

Ask yourself what hat am I wearing and what is my responsibility?

Buyer Agent?
Seller Agent?
Dual Agent?
In House Designee Agent?
Statutory Broker?

Check your continuing education file now to determine how many hours you have and how many hours you need by December 31. Don't wait until the last minute to take your education. You may be caught short.

Twenty-year Battle Over

Mark one up for environmentalists in the continuing saga over property rights.

The Supreme Court has ruled 6-3 in favor of a growth moratorium in the case of the Tahoe Sierra Preservation Council versus the Tahoe Regional Planning Agency.

The Court ruled that the TRPA "used sound judgement when it imposed a 32-month moratorium on building in the region in the early 1980's," according to press release issues by the TRPA.

The case began in 1984 when a lawsuit was filed by a group of landowners who argued that the temporary ban on building constituted a "taking" of their land. The litigation spanned two decades and was brought before the U.S. Supreme Court in January for the final decision.

The decision precludes TRPA from having to pay landowners for the 32-month building moratorium.

"Today's Supreme Court ruling will advance sound land-use planning practices nationwide," said TRPA Legal Council John Marshall. "This final decision allows all of us to move forward and focus our efforts on the future, instead of the past. We look forward to our continued work with the community in our mission to preserve this national treasure."

The majority opinion, drafted by Justice John Paul Stevens, focused on the reciprocal benefits all citizens receive when governments plan in a comprehensive fashion. Justice Stevens wrote: "To the extent the communities are forced to abandon using moratoria, landowners will have incentives to develop their property quickly before a comprehensive plan can be enacted, thereby fostering inefficient and ill-conceived growth."

The Supreme Court rejected the landowners automatic liability rule for any delay and instead adopted a ruling that each moratorium must be measured against a set of factors that balances the interests of the community in sound planning with the individual landowners' property rights. The Court concluded that because all lower court decisions had found TRPA's 32-month moratorium to be reasonable in its purpose, scope and duration, TRPA acted in the communities best interest and did not violate any constitutional mandates.

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New Pre-Licensing Education Opportunities

The Board of Realty Regulation Education Committee has approved a Distance Pre-licensing Education course to meet the 60 hour requirement for a sales license. That course is being offered on CD and is available through America's Best Real Estate School of Sequim Washington.

Mike Meredith, Education Director for the Board of Realty Regulation explains what this change will mean.

"We anticipate this will improve the options available to people entering the real estate profession. It will allow them to complete the education requirement without the difficulty of being away from home and the expense of travel. We have had great comments from licensees completing their continuing education by distance education and anticipate similar results with the distance pre-licensing format."

America's Best is in the process of developing a broker pre-licensing education course. The anticipated availability of that course is late summer.

For more information you can contact America's Best directly at 888-910-5452.

EVER WONDER...?

...how the computer geeks make those cool presentations on their computer using PowerPoint? Ever wondered how to do more than just create a few slides that changed at the click of a button?

WELL, here's your chance! The Board of Realty Regulation is offering an Instructor Development Workshop on development of PowerPoint presentations. This course is designed for the person who knows how to do the basics, but wants to know more. This class is geared for the education provider but could easily fit into your presentations as well.

When: September 5 & 6, 2002

Where: Wingate Inn in Helena

Instructor: Diane Simpson

Mark your calendars. Seating is very limited. Contact Mike at the Board office with questions. Pre-registration required.